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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,501	04/15/2004	Cheng Shen	SP-1285	8553
44388 SOLAE, LLC P. O. BOX 88940 ST. LOUIS, MO 63188	7590 04/12/2007		EXAMINER PADEN, CAROLYN A	
			ART UNIT 1761	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/12/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/825,501	SHEN, CHENG	
	Examiner	Art Unit	
	Carolyn A. Paden	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 December 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-54 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4-15-04 & 12-06-05</u> | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 6, 9, 15 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by van den Hoven (5,066,509).

Van den Hoven discloses storage stable liquor containing medium chain triglycerides. At example 3 a yoghurt beverage is prepared to have a pH of below 4.0. Fruit flavoring is contemplated as an ingredient in Table III at the top of column 8. Stabilizing agents from hydrocolloids are contemplated at column 5, lines 33-36.

Claims 1, 2, 6, 9, 10, 14, 15 and 22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Nakayama et al (6,287,623).

Nakayama discloses protein containing acidic foods and drinks. At example 6 a beverage was prepared that contains dextrin, sodium caseinate, salad oil polyglycerin fatty acid ester and water-soluble soybean fiber. After mixing with citric acid, the emulsion was adjusted to a pH of 3.9. Alternative protein sources are shown at column 3, lines 27-28. The

use of polysaccharides is described as protein stabilizers at column 4, lines 41-60. Alternative sour ingredients are shown at column 5, lines 54-59.

Claims 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakayama as further evidenced by Firestone.

Nakayama discloses protein containing acidic foods and drinks. At example 6 a beverage was prepared that contains dextrin, sodium caseinate, salad oil polyglycerin fatty acid ester and water-soluble soybean fiber. After mixing with citric acid, the emulsion was adjusted to a pH of 3.9. Alternative protein sources are shown at column 3, lines 27-28. The use of polysaccharides is described as protein stabilizers at column 4, lines 41-60. Alternative sour ingredients are shown at column 5, lines 54-59.

The fat content of the product is especially outlined in example 8 to contain soybean oil and rapeseed oil. Firestone is relied upon to show the oleic acid content of these oils.

Claims 1-3, 5-10, 14, 15, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Patel (6,811,804).

Patel discloses juice and soy protein beverage. In example 1 a beverage is formed to contain all of the ingredients of claim 1. The protein source of the beverage is shown at column 10, lines 40-62. The oil

sources are shown at column 7, lines 12-17. The use of pectin is shown at column 12, lines 47-57.

Claims 1-3, 5-6, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Sass (6,413,561) and see example 1; abstract; column 2, lines 52-64; column 3, lines 30-60; column 4, lines 4-17; column 5, lines 7-15.

Claims 1-4, 6 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by DeWille (6,475,539) and see example IV.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-26, 28-46, 49 and 50-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel (6,811,804).

Patel discloses a juice and soy protein beverage. In example 1, the beverages include soy protein, orange and carrot juice, canola oil and pectin. The pH of the beverage is disclosed at column 16, line 15 to be at pH 4. Pectin is disclosed as a stabilizing agent at column 12, lines 47-60. Alternative sources of soy protein are shown at column 8, lines 38-43. The

product claims appear to differ from Patel in the recitation of the solids content of the beverages but no unobvious or unexpected result is seen from the extent of dilution used in the beverage of Patel. The claims also appear to differ in the composition of the oil in the product but Patel provides for a variety of oils that contain a lot of oleic acid at column 7, lines 12-16. It would have been obvious to expect the beverage of Patel to have the oleic acid content of the claim and Firestone is relied on for support of this assertion. No unobvious or unexpected result is seen from the selection of genetically altered oils. With regard to the process, Patel provides for an array of acids for adjusting the pH of the beverage at column 11, lines 13-50 and column 13, lines 42-60. It is appreciated that the salt of the acid is not mentioned but salts of acids are well known to assist in buffering acidic solutions. If one of ordinary skill in the art wanted to control pH in the beverage of Patel, it would have been obvious to buffer the beverage. No unobvious or unexpected result is seen from the particular ratio of ingredients of claims 51-54.

Claims 4 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel as further evidenced by Firestone as applied to

claims 1-3, 5-10, 14, 15, 22-26, 28-46 and 50-54 above, and further in view of Huang (EP 1,338,210).

The claims appear to differ from Patel in the recitation of the use of high methoxyl pectin as a protein-stabilizing agent. Huang teaches that high methoxyl pectin is known in the art to be a protein-stabilizing agent. It would have been obvious to one of ordinary skill in the art to use the pectin of Huang as the pectin source in Patel to stabilize the proteins in the beverage.

Claims 1-3, 5, 6, 11-26, 28, 29 and 32-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sass (6,413,561) as further evidenced by Firestone.

Sass discloses an acidic drink that has a pH of 3.5 to 4.5. The beverage contains milk proteins and fat (column 2, lines 44-64). Hydrocolloids, including pectin, are shown at column 3, lines 30-61. Calcium and magnesium salts of the acids of claim 49 are shown at column 4, lines 4-17. The claims appear to differ from Sass in the recitation of the solids content of the product. The solids content of the beverage is an obvious indication of the amount of water added to the beverage. It would

have been obvious to alter the solids content of Sass according to the concentration of ingredients desired in the product.

The claims also differ in the presence of oleic acid in the oil source.

Oleic acid is well known to be present in a host of vegetable oils, as evidenced by Firestone, and is even present in milk. It would have been obvious to expect oleic acid in the oil components of Sass. It is also known in the art that mono-unsaturated fats have potential health benefits to consumers. It would have been obvious to incorporate vegetable oil in the product of Sass to capitalize on the health benefits associated with the mono-unsaturated fat.

With regard to the product claims, Sass teaches the use of the basic salts of the claims at column 4, lines 4-17. It is appreciated that sodium salts are not mentioned but no unobvious or unexpected result is seen from the selection of one basic salt source over the other. The claims finally differ in the mixing order of the composition. But Sass appears to perform steps A and B. the fact that the fat source appears to be blended in at Step A is not alone seen to constitute unobviousness. The inclusion of the flavors at step D appears to coincide with the pH adjustment in the process of Sass. No unobvious or unexpected result is seen from the particular

mixing order of the claims. No unobvious or unexpected result is seen from the ratio of the ingredients that are set forth in claims 51-54.

Claims 4 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sass (6,413,561) as further evidenced by Firestone as applied to claims 1-3, 5, 6, 11-26, 28,, 29, and 32-54 above, and further in view of Huang (EP 1,338,210).

The claims appear to differ from Sass in the recitation of the use of high methoxyl pectin as a protein-stabilizing agent. Huang teaches that high methoxyl pectin is known in the art to be a protein-stabilizing agent. It would have been obvious to one of ordinary skill in the art to use the pectin of Huang as the pectin source in Sass to stabilize the proteins in the beverage.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or

by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Carolyn Paden
CAROLYN PADEN 3-28-07
PRIMARY EXAMINER 1761